

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN CRUZ MENDEZ,) Case No. CV 13-9227-JPR
)
 Plaintiff,)
 vs.) **MEMORANDUM OPINION AND ORDER**
) **AFFIRMING COMMISSIONER**
CAROLYN W. COLVIN, Acting)
Commissioner of Social)
Security,)
 Defendant.)
_____)

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for Social Security disability insurance benefits ("DIB") and supplemental security income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed December 4, 2014, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed.

1 **II. BACKGROUND**

2 Plaintiff was born on April 1, 1958. (Administrative Record
3 ("AR") 231.) He completed third grade and worked as a
4 construction laborer. (AR 275.)

5 On November 14 and 17, 2011, Plaintiff submitted
6 applications for DIB and SSI, respectively, alleging that he had
7 been unable to work since November 11, 2009, because of diabetes,
8 "pain neuropathy," depression, insomnia, and back and neck
9 problems. (AR 231, 233, 274.) After his applications were
10 denied initially and on reconsideration, he requested a hearing
11 before an Administrative Law Judge. (AR 162.) A hearing was
12 held on April 3, 2013, at which Plaintiff, who was represented by
13 counsel, testified, as did a vocational expert and Plaintiff's
14 case manager at a mental-health clinic. (AR 64-93.) In a
15 written decision issued April 10, 2013, the ALJ found Plaintiff
16 not disabled. (AR 39-49.) On October 16, 2013, the Appeals
17 Council denied Plaintiff's request for review. (AR 4.) This
18 action followed.

19 **III. STANDARD OF REVIEW**

20 Under 42 U.S.C. § 405(g), a district court may review the
21 Commissioner's decision to deny benefits. The ALJ's findings and
22 decision should be upheld if they are free of legal error and
23 supported by substantial evidence based on the record as a whole.
24 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
25 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
26 evidence means such evidence as a reasonable person might accept
27 as adequate to support a conclusion. Richardson, 402 U.S. at
28 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).

1 It is more than a scintilla but less than a preponderance.
2 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
3 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
4 substantial evidence supports a finding, the reviewing court
5 "must review the administrative record as a whole, weighing both
6 the evidence that supports and the evidence that detracts from
7 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
8 720 (9th Cir. 1996). "If the evidence can reasonably support
9 either affirming or reversing," the reviewing court "may not
10 substitute its judgment" for that of the Commissioner. Id. at
11 720-21.

12 **IV. THE EVALUATION OF DISABILITY**

13 People are "disabled" for purposes of receiving Social
14 Security benefits if they are unable to engage in any substantial
15 gainful activity owing to a physical or mental impairment that is
16 expected to result in death or has lasted, or is expected to
17 last, for a continuous period of at least 12 months. 42 U.S.C.
18 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
19 1992).

20 A. The Five-Step Evaluation Process

21 The ALJ follows a five-step sequential evaluation process to
22 assess whether a claimant is disabled. 20 C.F.R.
23 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
24 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first
25 step, the Commissioner must determine whether the claimant is
26 currently engaged in substantial gainful activity; if so, the
27 claimant is not disabled and the claim must be denied.
28 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

1 If the claimant is not engaged in substantial gainful
2 activity, the second step requires the Commissioner to determine
3 whether the claimant has a "severe" impairment or combination of
4 impairments significantly limiting his ability to do basic work
5 activities; if not, a finding of not disabled is made and the
6 claim must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

7 If the claimant has a "severe" impairment or combination of
8 impairments, the third step requires the Commissioner to
9 determine whether the impairment or combination of impairments
10 meets or equals an impairment in the Listing of Impairments
11 ("Listing") set forth at 20 C.F.R., Part 404, Subpart P, Appendix
12 1; if so, disability is conclusively presumed.
13 §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

14 If the claimant's impairment or combination of impairments
15 does not meet or equal an impairment in the Listing, the fourth
16 step requires the Commissioner to determine whether the claimant
17 has sufficient residual functional capacity ("RFC")¹ to perform
18 his past work; if so, the claimant is not disabled and the claim
19 must be denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The
20 claimant has the burden of proving he is unable to perform past
21 relevant work. Drouin, 966 F.2d at 1257. If the claimant meets
22 that burden, a *prima facie* case of disability is established.

23 Id.

24 If that happens or if the claimant has no past relevant
25 work, the Commissioner then bears the burden of establishing that

27 ¹ RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. § 404.1545; see Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 the claimant is not disabled because he can perform other
2 substantial gainful work available in the national economy.
3 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). That determination
4 comprises the fifth and final step in the sequential analysis.
5 §§ 404.1520(a)(4), 416.920(a)(4); Lester, 81 F.3d at 828 n.5;
6 Drouin, 966 F.2d at 1257.

7 B. The ALJ's Application of the Five-Step Process

8 At step one, the ALJ found that Plaintiff had not engaged in
9 substantial gainful activity since November 11, 2009, the alleged
10 onset date. (AR 41.) At step two, she concluded that Plaintiff
11 had severe impairments of diabetes mellitus, neuropathy in the
12 legs and feet, and depression. (Id.) At step three, the ALJ
13 determined that Plaintiff's impairments did not meet or equal any
14 of the impairments in the Listing. (AR 42.) At step four, she
15 found that Plaintiff had the RFC to perform medium work with
16 additional restrictions. (AR 43.) His specific additional
17 mental restrictions were that he could perform "simple tasks,"
18 "should avoid public contact," and should engage in "no more than
19 occasional interaction with co-workers and supervisors." (Id.)
20 Based on the VE's testimony, the ALJ concluded that Plaintiff
21 could not perform his past relevant work as a construction
22 laborer. (AR 47.) At step five, the ALJ found that Plaintiff
23 could perform jobs that existed in significant numbers in the
24 national economy. (AR 48.) Accordingly, she found him not
25 disabled. (AR 49.)

1 V. DISCUSSION

2 The ALJ Properly Considered the Examining Psychiatrist's
3 Findings and Opinions

4 Plaintiff contends that the ALJ erred in assessing the
5 findings and opinions of Dr. William Goldsmith, the consultative
6 examining psychiatrist. (J. Stip. at 4-9, 12-16.) For the
7 reasons discussed below, remand is not warranted.

8 1. Applicable law

9 Three types of physicians may offer opinions in Social
10 Security cases: (1) those who directly treated the plaintiff, (2)
11 those who examined but did not treat the plaintiff, and (3) those
12 who did neither. Lester, 81 F.3d at 830. A treating physician's
13 opinion is generally entitled to more weight than that of an
14 examining physician, and an examining physician's opinion is
15 generally entitled to more weight than that of a nonexamining
16 physician. Id.

17 This is true because treating physicians are employed to
18 cure and have a greater opportunity to know and observe the
19 claimant. Smolen, 80 F.3d at 1285. If a treating physician's
20 opinion is well supported by medically acceptable clinical and
21 laboratory diagnostic techniques and is not inconsistent with the
22 other substantial evidence in the record, it should be given
23 controlling weight. §§ 404.1527(c)(2), 416.927(c)(2). If a
24 treating physician's opinion is not given controlling weight, its
25 weight is determined by length of the treatment relationship,
26 frequency of examination, nature and extent of the treatment
27 relationship, amount of evidence supporting the opinion,
28 consistency with the record as a whole, the doctor's area of

1 specialization, and other factors. §§ 404.1527(c)(2)-(6),
2 416.927(c)(2)-(6).

3 When a treating or examining physician's opinion is not
4 contradicted by other evidence in the record, it may be rejected
5 only for "clear and convincing" reasons. See Carmickle v.
6 Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008)
7 (quoting Lester, 81 F.3d at 830-31). When a treating or
8 examining physician's opinion is contradicted, the ALJ must
9 provide only "specific and legitimate reasons" for discounting
10 it. Id. The weight given an examining physician's opinion,
11 moreover, depends on whether it is consistent with the record and
12 accompanied by adequate explanation, among other things.
13 §§ 404.1527(c)(3)-(6), 416.927(c)(3)-(6).

14 2. Relevant background

15 In October 2011, Plaintiff complained of depression during a
16 visit to the emergency room for diabetes-related symptoms. (AR
17 346-50.) He was referred to a mental-health center (AR 407-08,
18 604), where he was treated by Dr. Ronen Alon, a psychiatrist,
19 from November 29, 2011, to February 26, 2013 (AR 402-20, 554,
20 573-89).

21 On March 12, 2012, Dr. William Goldsmith, a board-certified
22 psychiatrist, performed a consultative psychiatric examination of
23 Plaintiff. (AR 367.) Plaintiff denied that he received regular
24 psychiatric care, although at the time he was enrolled in the
25 mental-health clinic. (Id.) Although he was "shabbily dressed"
26 and a "little unkempt," he was cooperative and spoke "good
27 accented English." (Id.) Dr. Goldsmith noted that "[b]ut for"
28 his diabetes-related symptoms, including neuropathy, weakness,

1 and numbness in his legs, Plaintiff "would be employed, although
2 he is functionally illiterate." (Id.)

3 Dr. Goldsmith noted that Plaintiff's affect was "blunted"
4 and that he was "tearful" when he discussed his loneliness and
5 separation from his family. (AR 369.) His mood was dysphoric,
6 but his speech was clear and coherent. (Id.) His memory was
7 "intact," and he was able to concentrate "adequately" during the
8 interview. (Id.) His thought content was "without gross
9 delusional thinking," and he did not have any suicidal or
10 homicidal ideation. (Id.) His general fund of knowledge was
11 good, and his ability to abstract was "intact." (AR 369-70.)

12 In Dr. Goldsmith's opinion, Plaintiff was "a little
13 impaired" in his ability to understand, remember, and carry out
14 simple one- or two-step job instructions. (AR 370.) He was
15 "moderately impaired" in his ability to follow detailed and
16 complex instructions and to relate to and interact with
17 supervisors, coworkers, and the public. (Id.) He was "severely
18 impaired" in his ability to associate with day-to-day work
19 activity, "including attendance and safety," and to adapt to the
20 stresses common to a normal work environment. (AR 371.) On the
21 other hand, Plaintiff's ability to maintain regular attendance in
22 the workplace was "intact," as was his ability to perform work
23 activities "on a consistent basis" and without special
24 supervision. (Id.) Plaintiff's prognosis was "fair" and
25 "depend[ed] on improvement in his physical and social condition."
26 (Id.)

27 In addition to her RFC finding of medium work, the ALJ found
28 that Plaintiff could perform simple tasks but should engage in

1 "no more than occasional" interaction with coworkers and
2 supervisors and should avoid public contact. (AR 43.) She also
3 stated as part of the RFC that Plaintiff should avoid uneven
4 terrain and ladders. (Id.) She gave "significant weight" to Dr.
5 Goldsmith's findings and opinions – specifically noting his
6 "severe" findings (AR 46) – because they were "consistent with
7 and supported by the substantial medical evidence of record."
8 (AR 47.)

9 3. Analysis

10 Plaintiff contends that the ALJ failed to give specific and
11 legitimate reasons for rejecting Dr. Goldsmith's opinion that he
12 was "severely impaired" in his ability to associate with day-to-
13 day work activity and adapt to stresses of the work environment.
14 (J. Stip. at 6, 13.) He bases his argument on the premise that
15 the ALJ, in failing to account for Dr. Goldsmith's "severely
16 impaired" statements in her RFC determination, effectively
17 "rejected" them and was therefore required to give specific and
18 legitimate reasons for doing so. (Id. at 6.)

19 But the ALJ did not reject those statements so much as
20 resolve conflicts within Dr. Goldsmith's report. Although Dr.
21 Goldsmith opined that Plaintiff was "severely impaired" in his
22 ability to associate with day-to-day work activity, "including
23 attendance and safety," and to adapt to work stresses, he also
24 assessed as "intact" Plaintiff's ability to "maintain regular
25 attendance" and "perform work activities on a consistent basis"
26 and "without special or additional supervision." (AR 371.) This
27 apparent conflict or ambiguity was for the ALJ to resolve. See
28 Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 603 (9th Cir.

1 1999) (holding that ALJ was "responsible for resolving conflicts"
2 and "internal inconsistencies" within treating psychiatrist's and
3 examining psychologist's reports).

4 Indeed, the ALJ gave "significant weight" to Dr. Goldsmith's
5 report – though not great weight, indicating that she did not
6 accept all of it – because it was consistent with the medical
7 evidence documented by Dr. Alon from November 2011 to February
8 2013, which showed that Plaintiff was "stable on medications,
9 with good response to treatment and no complaints of physical or
10 mental health symptoms." (AR 47; see, e.g., AR 573-88 (Dr. Alon
11 noting from Jan. 9, 2012, to Feb. 26, 2013, that Plaintiff
12 reported, "I am doing fine," was "stable on meds," and had "good"
13 response to treatment).) She incorporated Dr. Goldsmith's other
14 functional assessments into her RFC determination – that
15 Plaintiff was "moderately impaired" in his ability to carry out
16 detailed instructions and to interact with the public (AR 370) –
17 finding that Plaintiff could perform simple tasks but was limited
18 to "no more than occasional" interaction with coworkers and
19 supervisors and should avoid public contact (AR 43). She also
20 assessed some safety limitations, stating that Plaintiff should
21 avoid uneven terrain and ladders, thereby taking into account Dr.
22 Goldsmith's findings in that regard. (Id.) She therefore
23 properly determined the weight to give to Dr. Goldsmith's opinion
24 based on the amount of evidence supporting it, see
25 §§ 404.1527(c)(3), 416.927(c)(3), and its consistency with the
26 record as a whole, see §§ 404.1527(c)(4), 416.927(c)(4).
27 Accordingly, she properly assessed Dr. Goldsmith's findings and
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1 opinions.² Plaintiff is not entitled to remand on this ground.

2 **VI. CONCLUSION**

3 Consistent with the foregoing, and under sentence four of 42
 4 U.S.C. § 405(g),³ IT IS ORDERED that judgment be entered
 5 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's
 6 request for remand, and DISMISSING this action with prejudice.

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12 ² To the extent the ALJ "rejected" certain statements within
 13 Dr. Goldsmith's report, she properly did so because they were
 14 based on the subjective complaints of Plaintiff, whom she found
 15 not credible. (See AR 46-47); cf. Magallanes v. Bowen, 881 F.2d
 16 747, 755 (9th Cir. 1989) (ALJ need not recite "magic words" to
 17 reject treating physician's opinion; court may draw "specific and
 18 legitimate inferences" from ALJ's opinion). Plaintiff does not
 19 challenge the ALJ's credibility determination; indeed, he
 20 acknowledges that she gave clear and convincing reasons for
 21 discounting his credibility, including concerning his depression
 22 and its effects. (J. Stip. at 13; see also AR 46-47.) Because
 23 Dr. Goldsmith relied on Plaintiff's subjective complaints in
 24 reaching his conclusions (see, e.g., AR 367 (noting that
 25 Plaintiff was "source of information" for evaluation)), the ALJ
 26 was entitled to disregard those of his conclusions that she
 27 determined were not supported by other evidence in the record.
See Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001)
 28 (because record supported ALJ's discounting of claimant's
 credibility, ALJ "was free to disregard [examining physician's]
 opinion, which was premised on [claimant's] subjective
 complaints"). Thus, to the extent the ALJ rejected portions of
 Dr. Goldsmith's opinion, she did so for specific and legitimate
 reasons.

3 This sentence provides: "The [district] court shall have
 power to enter, upon the pleadings and transcript of the record,
 a judgment affirming, modifying, or reversing the decision of the
 Commissioner of Social Security, with or without remanding the
 cause for a rehearing."

1 IT IS FURTHER ORDERED that the Clerk serve copies of this Order
2 and the Judgment on counsel for both parties.

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4 DATED: April 7, 2015


5 JEAN ROSENBLUTH
U.S. Magistrate Judge

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